

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )

Implementation of Section 309(j)  
of the Communications Act )  
Competitive Bidding )  
Narrowband PCS )

PP Docket No. 93-253  
DA 94-1560

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

and

Amendment of the Commission's )  
Rules to Establish New Narrowband )  
Personal Communication Services )

GEN Docket No. 90-314  
ET Docket No. 92-100

To: The Commission

COMMENTS OF EATELCORP, INC.

EATELCORP, Inc., ("EATEL"), by its attorneys, submits the following Comments in response to the above-captioned Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking ("Order"), released by the Commission on August 17, 1994,<sup>1</sup> and its Public Notice, DA 94-1560, released December 21, 1994 ("Public Notice"). In light of the results of the recent regional narrowband PCS auction, and its reconsideration of its broadband PCS entrepreneur's block rules in the Fifth Memorandum Opinion and Order ("Fifth MO&O"), PP Docket No. 93-253, released November 23, 1994, the Commission seeks comment on its narrowband Personal Communications Service ("PCS") entrepreneur's block proposals. EATEL supports an extension of the "control group" definition modifications adopted in the Fifth MO&O to the narrowband PCS process. Specifically, control group participants

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<sup>1</sup>/ Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, PP Docket No. 93-253, GEN Docket No. 90-314, ET Docket No. 92-100, released August 17, 1994.

should include businesses which are majority-owned and controlled by women and/or minorities for purposes of determining eligibility for minority and/or women-owned business preferences in the licensing of narrowband PCS. Modification of the Commission's Rules in this proceeding will promote fulfillment of the Congressional mandate to design auction procedures that ensure opportunities for designated entities to obtain licenses and provide services.<sup>2</sup> In support thereof, EATEL shows the following:

#### I. STATEMENT OF INTEREST

1. EATEL, a company primarily involved in the provision of telecommunications services, owns and operates the East Ascension Telephone Company, Inc. which serves approximately 27,000 access lines in and around Gonzales, Louisiana. EATEL's majority and controlling shareholders are women. EATEL is actively considering participation in the provision of PCS and is concerned that the Commission's Rules may inadvertently impede its ability to do so. While the Commission has taken certain measures in this proceeding in response to Congressional directives to ensure opportunities for businesses owned by minorities and/or women, EATEL submits that one provision of the Order unnecessarily limits participation by existing women and/or minority controlled businesses, and thus is contrary to Congressional intent.<sup>3</sup>

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<sup>2</sup>/ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(a), 107 Stat. 312, 387-389 (1993) (adopting 47 U.S.C. §§ 309(j)(3)(B), 309(j)(4)(D)).

<sup>3</sup>/ 47 C.F.R. § 24.320(c)(i) provides, in pertinent part, that a business owned by members of minority groups and/or women is an entity (i) that has a control group composed 100 percent of

2. On August 22, 1994, EATEL filed a Petition for Reconsideration ("Petition") of the Fifth Report & Order ("Fifth R&O") released on July 15, 1994.<sup>4</sup> In its Petition, EATEL asserted that the ownership requirements set forth in the Fifth R&O with respect to "broadband" PCS were unnecessarily restrictive. EATEL recommended that the FCC amend its rules to provide that control group participants, for purposes of eligibility for minority and/or women-owned business preferences, may include businesses which are majority-owned and controlled by women and/or minorities. In recognition of the Congressional directive and in order to advance its objectives of promoting competition and diversity in the broadband PCS marketplace, the Commission responded to EATEL's Petition (and other Petitions filed in the referenced proceeding) by modifying its definition of a minority and women-owned business to include preexisting companies that are controlled by women or minorities but have noncontrolling investors in the control group who are not minorities or women.<sup>5</sup>

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members of minority groups and/or women who are United States Citizens.

<sup>4/</sup> Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, Fifth Report & Order, PP Docket No. 93-253, released July 15, 1994, 59 Fed. Reg. 37566 (July 22, 1994). See also Notice of Proposed Rulemaking, PP Docket 93-253, FCC 93-455, released October 12, 1993; Second Report & Order, PP Docket 93-253, FCC 94-61, released April 20, 1994.

<sup>5/</sup> "We agree with petitioners that some accommodation should be made in our regulations to allow participation in an applicant's control by existing firms controlled by designated entities or entrepreneurs that have investors that, if attributed, would cause the applicant to exceed the small business or entrepreneurs' blocks financial caps or, for minority or women-owned applicants, investors that are not minorities or women." Fifth MO&O at ¶ 62.

3. EATEL submits that the definition of minority and women-owned businesses in the context of preference eligibility in narrowband PCS licensing should be modified in exactly the same manner as that rule<sup>6</sup> was modified in the broadband PCS proceeding - - for purposes of eligibility for minority and/or women-owned business preferences, control group participants may include businesses which are majority-owned and controlled by women and/or minorities. By modifying its rules in this proceeding, the Commission will serve the public interest by adopting the appropriate regulatory design for the meaningful participation of minority and/or women owned businesses in the provision of narrowband PCS.

## II. DISCUSSION

### **A. The Commission Should Modify Its Rules To Allow Businesses Majority-Owned and Controlled By Minorities And/Or Women To Qualify For Preferences Intended To Benefit Such Businesses**

4. EATEL submits that the Commission's current ownership requirements are contrary to Congressional directive and Commission policy and, therefore, should be amended. Section 24.320(c)(i) of the Commission's Rules requires that minority and/or women-owned businesses are eligible for preferential treatment only if they have a control group composed 100 percent of minorities and/or women. Many small telephone companies and other businesses which are controlled by minorities and/or women nonetheless have some percentage of non-minority, male shareholders. As a consequence of

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<sup>6</sup>/ 47 C.F.R. § 24.720(c)(i).

this rule provision, existing minority and/or women-owned businesses could face insurmountable difficulties in bidding for PCS spectrum. Section 24.320(c)(i) of the Commission's Rules precludes existing minority and/or women-controlled businesses from taking advantage of the preferences for which they are otherwise eligible if such businesses join with passive investors for financial strength.

5. This anomalous result contradicts the Commission's recognition that preferences are necessary for minority and/or women-owned businesses to attract sufficient capital to effectively compete in spectrum auctions:

Our goal in the narrowband personal communications service is to meet fully the statutory mandate of Section 309(j)(4)(D), as well as the objectives of promoting economic opportunity and competition, of avoiding excessive concentration of licenses, and of ensuring access to new and innovative technologies by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. As explained more fully below, we believe that it is necessary in some respects to do more to ensure that small businesses and businesses owned by members of minority groups and women have a meaningful opportunity to participate in the provision of narrowband PCS.<sup>7</sup>

Under current rules, existing majority-owned and controlled businesses, while surely among the intended beneficiaries of the Congressional mandate, are ineligible "control group" participants because they do not meet the 100 percent ownership requirement.

6. Companies such as EATEL which are controlled, but not 100 percent owned, by women and/or minorities are eligible themselves

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<sup>7</sup>/ Order at ¶ 41.

for preferential treatment, but are artificially precluded from maintaining that eligibility when joining with other investors because they are ineligible "control group" participants under current rules. 47 C.F.R. § 24.320(c)(i). Consequently, the rules restrict the opportunity for these companies to take advantage of Congressionally-targeted preferences so severely as to render these benefits non-existent.

**B. The Same Congressional Mandate and Policy Goals Underlie Both The Commission's Broadband And Narrowband PCS Proceedings.**

7. EATEL submits that since the same policy goals and Congressional directives -- to ensure opportunities for businesses owned by minorities and/or women -- apply to both the broadband and the narrowband PCS proceedings, the rule modifications adopted in the Fifth MO&O should be applied in the context of the narrowband PCS proceeding. Specifically, EATEL submits that the FCC should amend its narrowband rules to provide that control group participants, for purposes of eligibility for minority and/or women-owned business preferences, may include businesses which are majority-owned and controlled by women and/or minorities.

8. In the Fifth MO&O, the Commission modified its rules to allow entities that are controlled by minorities and/or women, but that have investors that are neither minorities nor women, to be part of the control group.<sup>8</sup> The Commission noted that such changes provide a reasonable balance between the need to ensure that designated entities have a significant economic investment in the

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<sup>8</sup>/ Fifth MO&O at ¶ 62.

applicant, and the financial realities of a PCS venture.

9. In the Third Report and Order in this docket,<sup>9</sup> the Commission employed several measures to enhance opportunities for designated entities bidding on certain narrowband PCS licenses. The Commission itself notes, however, that in adopting these measures, it assumed that narrowband PCS would involve relatively low capital entry requirements, and would therefore be well-suited to small entities which lack access to large amounts of capital.<sup>10</sup> In response to petitions and its experience with the nationwide narrowband auctions, the Commission decided to modify its definition of small business to expand eligibility and increased the bidding credit for 100 percent minority and women-owned businesses.<sup>11</sup> These provisions, however do not adequately address the fact that existing women-controlled businesses are also among the intended beneficiaries of the Congressional mandate.

10. Accordingly, EATEL submits that the FCC should amend its rules in this proceeding, as it did in the Fifth MO&O, to provide that control group participants, for purposes of eligibility for minority and/or women-owned business preferences, may include businesses which are majority-owned and controlled by women and/or minorities. Thus, if a woman/minority controlled entity or group of entities controls the PCS applicant, and the applicant meets

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<sup>9</sup>/ Third Report and Order, PP Docket No. 93-253, 9 FCC Rcd 2941, ¶¶ 66-89 (1994).

<sup>10</sup>/ Order at ¶ 40.

<sup>11</sup>/ Id. at ¶¶ 47-51, 58.

either of the equity tests described in the rules, the applicant should qualify as a designated entity.

**CONCLUSION**

New PCS services represent a significant opportunity for women-owned businesses, due in part to a Congressional mandate to ensure that the use of competitive bidding to award PCS licenses does not exclude meaningful participation by women and minority owned businesses. In order to fulfill this mandate, the Commission's rules should not preclude eligible and experienced women and minority owned businesses from attracting sufficient capital.

Respectfully submitted,

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January 13, 1995



**CERTIFICATE OF SERVICE**

I, Margaret D. Nyland, of Kraskin & Lesse, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that copies of the foregoing Comments of EATELCORP, Inc. were served this 13th day of January, 1995 on the following parties:

  
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